



International tax, transfer pricing, and
customs risks in a changing environment

The Deadly Sins of Import Trade Compliance: Costly Mistakes and How to Avoid Them

March 17, 2022 | 2:15-3:15 p.m. Eastern

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Disclaimer

The information provided herein is educational in nature and is based on authorities that are subject to change. You should contact your tax adviser regarding application of the information provided to your specific facts and circumstances.

Agenda

1

Identify the most frequent import compliance “sins” committed by U.S. importing entities and strategies to reduce risk

2

Recognize the different types of enforcement efforts utilized by CBP and what to expect if selected for an audit

3

Learn effective strategies to recover and minimize duty liability



Introduction



A quick primer

U.S. Customs and Border Protection (CBP)

- Department of Homeland Security (DHS)
- Third Act of Congress (1789)
- Trade Acts of 1930 and 1974
- Customs Modernization Act (1984)
- 500 trade laws and 47 federal agencies



Ronald Reagan Building and International Trade Center
Washington, D.C.

Reasonable care

“Under Section 484 of the Tariff Act, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and determine the value of imported merchandise and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether other applicable legal requirements, if any, have been met. CBP is then responsible for fixing the final classification and value of the merchandise. An importer of record’s failure to exercise reasonable care could delay release of the merchandise and, in some cases, could result in the imposition of penalties or, in certain instances, referral for criminal enforcement.”

- “What Every Member of the Trade Community Should Know About: Reasonable Care,”
U.S. Customs and Border Protection, September 2017

Howdy duty!

- Classification of goods under the Harmonized Tariff Schedule (HTS)
- Rates of duty
 - *Ad valorem* = Entered value
 - Specific = Quantity
 - Compound = *Ad valorem* + specific
 - Free = Everyone's favorite

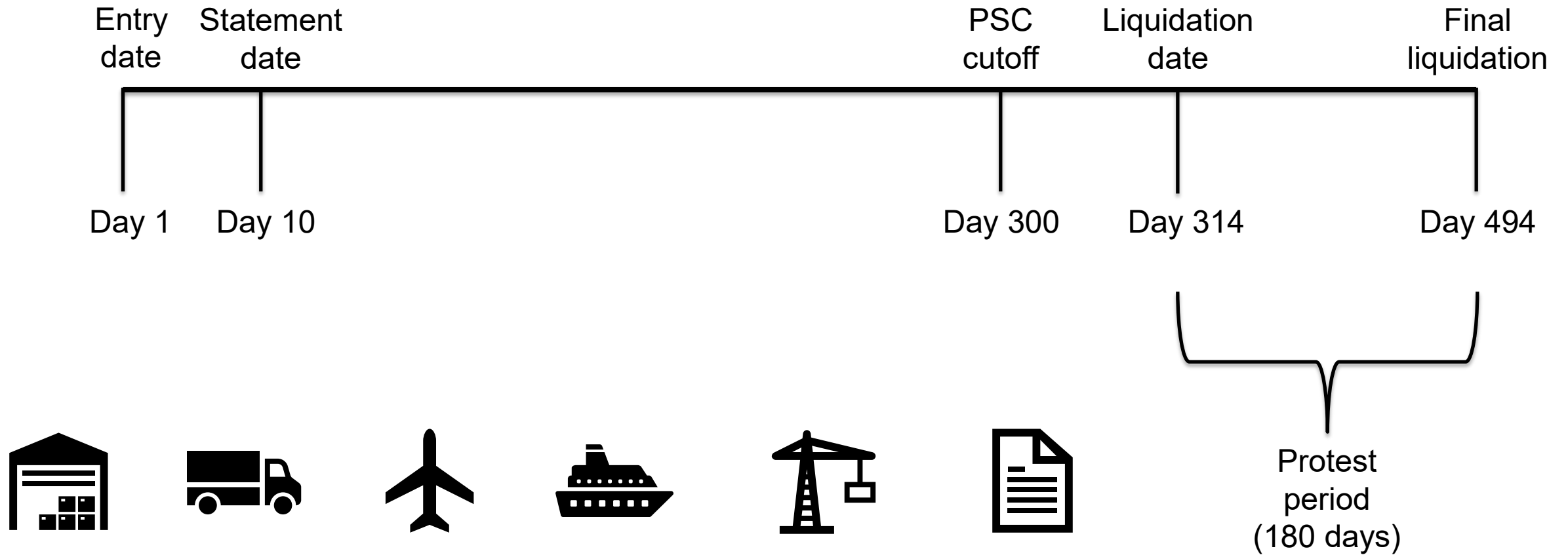
Harmonized Tariff Schedule of the United States Revision 2 (2022)

Annotated for Statistical Reporting Purposes

XVI
85-26

Heading/ Subheading	Stat. Suf- fix	Article Description	Unit of Quantity	Rates of Duty		
				General	1 Special	2
8509		Electromechanical domestic appliances, with self-contained electric motor, other than vacuum cleaners of heading 8508; parts thereof:				
8509.40.00		Food grinders, processors and mixers; fruit or vegetable juice extractors.....		4.2% ^{51/}	Free (A, AU, BH, CL, CO, D, E, IL, JO, KR, MA, OM, P, PA, PE, S, SG)	40%
	15	Blenders.....	No.			
	25	Other food mixers.....	No.			
	30	Juice extractors.....	No.			
	40	Food grinders and processors.....	No.			
8509.80		Other appliances:				
8509.80.10	00	Floor polishers.....	No.	Free ^{62/}		35%
8509.80.20	00	Kitchen waste disposers (disposals).....	No.	Free ^{63/}		40%
8509.80.50		Other:.....		4.2% ^{63/}	Free (A, AU, BH, CL, CO, D, E, IL, JO, KR, MA, OM, P, PA, PE, S, SG)	40%
0810		Other fruit, fresh:				
0810.10		Strawberries:				
0810.10.20		If entered during the period from June 15 to September 15, inclusive, in any year.....		0.2c/kg ^{1/}	Free (A, AU, BH, CL, CO, D, E, IL, JO, KR, MA, OM, P, PA, PE, S, SG)	2.8c/kg
	10	Certified organic.....	kg			
	90	Other.....	kg			

Life of a customs entry



The deadly sins of import compliance



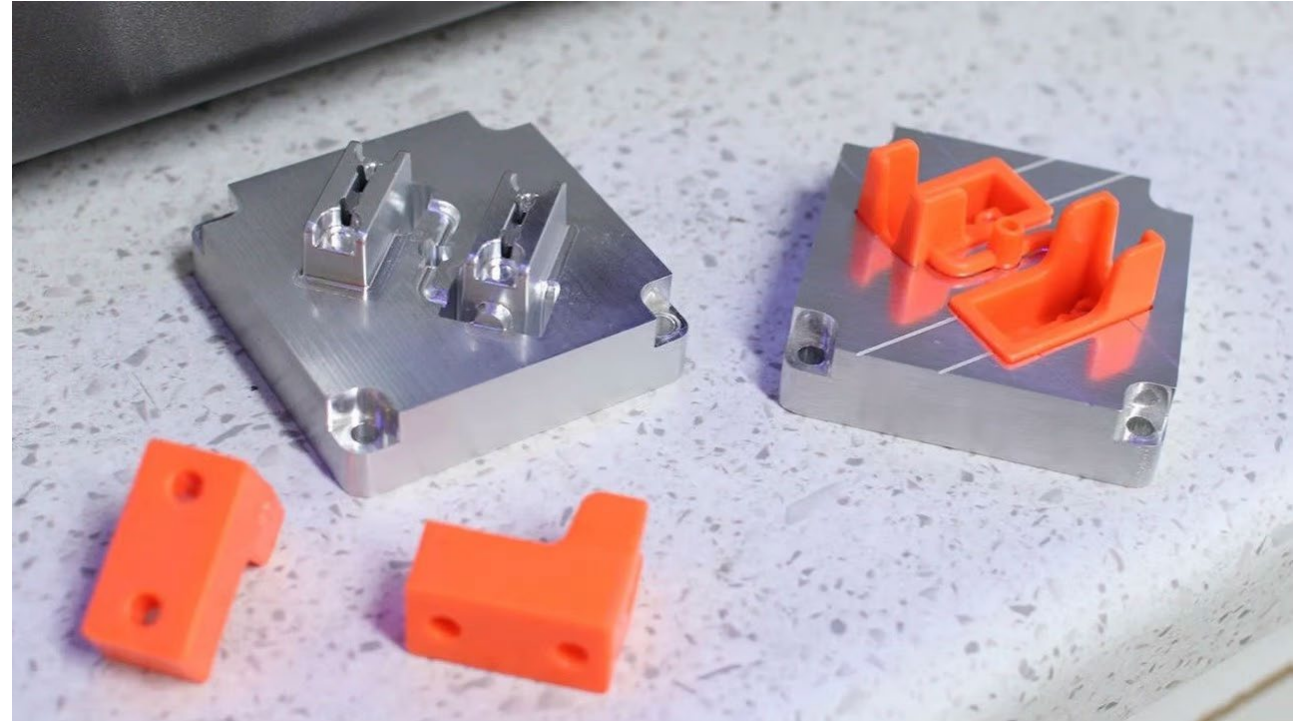
Deadly sins: Additions to the price paid or payable

- Assists
- Certain royalties or licensing fees
- Packaging
- Commissions
- Proceeds



Deadly sins: Manufacturing assists

- Materials, parts, and components
- Tooling, dies, molds
- Certain engineering and R&D



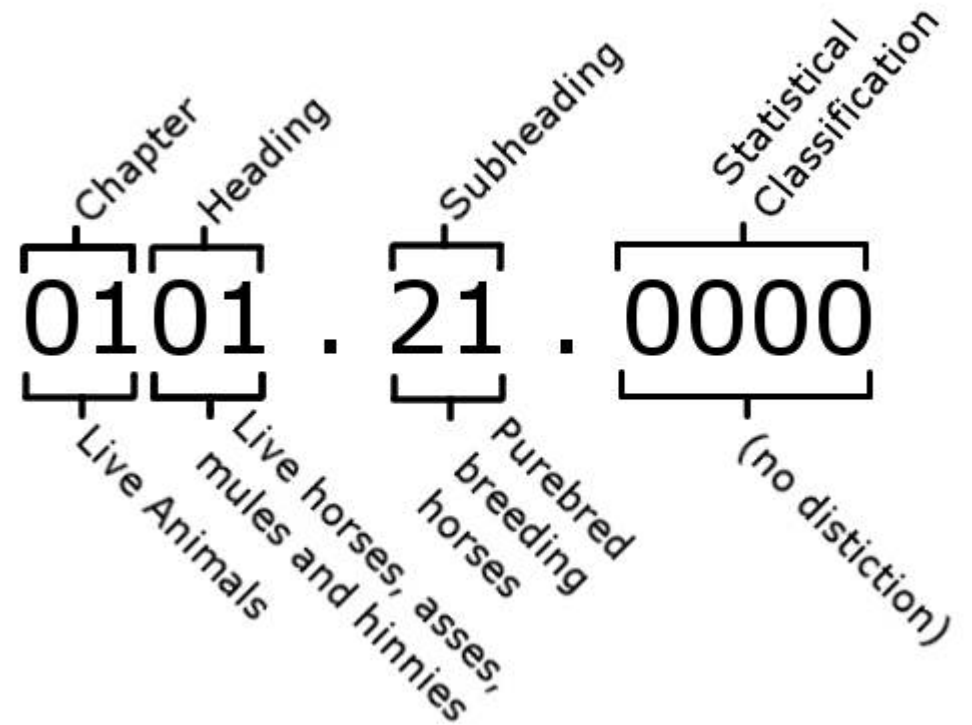
Deadly sins: Related party transactions

- Basis of appraisalment
- Circumstance of sale
- Test values
- Reconciliation



Deadly sins: Tariff classification

- Get specific
- General rules of interpretation
- Section & chapter notes
- Explanatory notes
- Informed compliance publications
- Customs Ruling Online Search System (CROSS)
- Call a CEE or get a ruling
- NPI
- Document it!



Deadly sins: Special program indicators (SPIs)

- Special trade programs
- Free trade agreements (FTAs)

Special trade programs	Free trade agreements
Generalized System of Preferences	Australia
Automotive Products Trade Act	Bahrain
Agreement on Trade in Civil Aircraft	U.S. Mexico Canada FTA
African Growth & Opportunity Act	Chile
Caribbean Basin Economic Recovery Act	Japan
	Dominican Republic-Central America-United States Free Trade Agreement Implementation Act
United States-Israel Free Trade Area	
United States-Jordan Free Trade Implementation Act	Morocco
Agreement on Trade in Pharmaceutical Products	Singapore
Uruguay Round Concessions on Intermediate Chemicals for Dyes	Oman
United States-Caribbean Basin Trade Partnership Act	Peru
Nepal Preference Program	South Korea
	Colombia
	Panama

Deadly sins: Preferential duty provisions

- U.S. goods returned
- Repairs/warranty
- Foreign assembly of U.S. components
- Temporary Importation Bonds (TIBs)
- Government imports
- Prototypes



Deadly sins: Country of origin and marking

- Substantial transformation
- Rules of origin
- Legible, conspicuous, and permanent



Deadly sins: Recordkeeping

- 19 U.S.C. §1508
- Five (5) years
- Entry packets
- Records kept *"in the ordinary course of business"*
- Recordkeeping penalties



Deadly sins: Forced labor

- Tariff Act of 1930
- Trade Facilitation and Trade Enforcement Act (2016)
- Forced Labor Division – CBP
- Withhold Release Orders (WROs) and findings
- Guilty until proven innocent
- Adopt forced labor risk mitigation strategies

CBP Forced Labor stats

- **Total active**
 - 10 findings
 - 65 WROs
- **FY 2021 stats**
 - 2 findings issued
 - 7 WROs issued
 - 4 WROs & findings modified or revoked
 - 1,469 shipments detained

Deadly sins: Participating government agencies

Over 500 trade laws and 47 government agencies

- U.S. Food & Drug Administration (FDA)
- Environmental Protection Agency (EPA)
- U.S. Fish & Wildlife Service (FWS)
- Federal Communications Commission (FCC)



*<https://www.fdaimports.com/regulations/customs/partner-government-agencies-pga/>

In closing



You know your CPA...

But how well do you know your customs broker?

- Check NCBFAA
- Product/industry familiarity
- Disciplinary issues?
- Onboarding
- DLSOP
- Employee development
- Account management
- Yelp it



You know your insurance agent...

But how well do you know your customs bond broker/surety?

- Trusted partner
- Check out the tools!
 - Risk mitigation
 - Bond sufficiency



What's the risk?

- Fines, Penalties & Forfeitures (FPF)
 - 19 U.S.C. §1592
 - Liquidated damages
 - Seizures and forfeitures
 - Recordkeeping penalties
 - Willful failure: No greater than \$100K for each release (or 75% of value)
 - Negligence: Not greater than \$10K for each release (or 40% of value)
- Marking duties
 - 10% additional duty

Degree of culpability	Revenue loss	No revenue loss
Fraud	Domestic value	Domestic value
Gross negligence	4 times loss of revenue	40% of dutiable value
Negligence	2 times loss of revenue	20% of dutiable value

* 19 U.S.C. §1592 penalty guidelines

Degree of culpability	Revenue loss	No revenue loss
Fraud	5 to 8 times loss of revenue	50 to 80% of dutiable value
Gross negligence	2.5 to 4 times loss of revenue	25 to 40% of dutiable value
Negligence	0.5 to 2 times loss of revenue	5 to 20% of dutiable value

* 19 U.S.C. §1592 mitigation guidelines

Enforcement

- Data analysis
- Entry documents required
- Cargo examinations
- Compliance measurements
- Request for Information (CBP Form 28)
- Notice of Action (CBP Form 29)
- Quick response audits (QRAs)
- Civil investigations and criminal referrals
- Focused assessments



Speaking of focused assessments

Import compliance assessment

- Import data analysis
- Internal control evaluation
- Transactional testing
- Interviews
- Exit conference
- Compliance improvement plan (CIP)
- Optional import compliance policy & procedure manual
- Optional ad hoc consulting



Complementary offer

Trade data analysis

- ITRAC or ACE data
- Five-year lookback
- Duty recovery
- Future duty minimization
- Trade compliance risk mitigation
- \$250 handling fee





How we can help

- Import compliance assessments
- Policy & procedure manuals
- Tariff classification
- Qualifying goods & determining eligibility
- Duty recovery & minimization
- Penalty & audit assistance
- Disclosures & rulings
- Ad hoc consulting



Thank you

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